



**In re Estate of Benedict Eliud Ouma (Deceased) (Succession Cause  
372 of 2008) [2024] KEHC 3581 (KLR) (25 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3581 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
SUCCESSION CAUSE 372 OF 2008  
RE ABURILI, J  
MARCH 25, 2024**

**BETWEEN**

**LINET A OUMA ..... 1<sup>ST</sup> ADMINISTRATOR**

**ELISHA OLANDO OMONDI ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**DOROTHY ADHIAMBO OUMA ..... 1<sup>ST</sup> BENEFICIARY**

**DIANA ATIENO OUMA ..... 2<sup>ND</sup> BENEFICIARY**

**TERESA ADHIAMBO OUMA ..... 3<sup>RD</sup> BENEFICIARY**

**FILIDA AKUMU OUMA ..... 4<sup>TH</sup> BENEFICIARY**

**RULING**

1. The deceased to whose estate these age old proceedings relate is Benedict Eliud Ouma, who died on the 5<sup>th</sup> June 2006 and letters of administration intestate were issued to the two administrators herein on the 21<sup>st</sup> January 2009. On the 25<sup>th</sup> June 2022, the administrators filed Summons for the Confirmation of Grant dated 10<sup>th</sup> February 2022.
2. Teresia Adhiambo Ouma, the 3rd beneficiary herein swore an affidavit of protest dated 20<sup>th</sup> April 2022 on her own behalf and on behalf of the beneficiaries herein (hereinafter called the protestors) in which she stated that no account had been rendered by the administrators which was a requirement prior to an application to confirm the grant.
3. The protestors further deposed that the inventory of assets falls short of the expectation of section 83 (h) of the *Law of Succession Act* as the bank statements in respect of various bank accounts held by the deceased prior to his death had not been exhibited and further, that no official search certificates for the deceased's immovable properties had been exhibited to confirm the same.



4. The protestors further averred that as the deceased died intestate, their concurrence and that of the co-dependants on the mode of distribution of the estate had not been sought and obtained and that neither were they consulted or involved in the petition for grant by the administrators.
5. The protestors filed a further affidavit sworn on the 5<sup>th</sup> December 2023 in which they reiterated that the filing of accounts must precede the application for confirmation of grant or at worst the accounts must accompany the application and that it was a legal obligation on the part of the administrators to keep and maintain records of accounts failure to which sanctions attach.
6. It was further averred that the protestors were aware that the 1<sup>st</sup> administrator had been conducting the affairs of the estate in a unilateral and non-transparent manner to the exclusion of her co-administrator.
7. In response, the 1<sup>st</sup> administrator filed an affidavit sworn on the 18<sup>th</sup> October 2023 in which she deposed that according to her, she had set out the full inventory of all the assets of the deceased's estate in the affidavit in support of the Summons for Confirmation of Grant.
8. She further deposed that it was her co-wife and her children who had custody of all title documents for the deceased's estate while she only had one title deed and that her co-wife gave her a list of the properties which she set out in Form P&A 5 though she did not verify the same. It was her averment that in 2021, she was given another list of the deceased's assets and that currently, only the properties listed in her affidavit in support of the Summons for Confirmation of Grant form part of the deceased's estate.
9. The 1<sup>st</sup> administrator further deposed that at the time of filing of the petition for grant in August 2008, they had indicated that the deceased had a bank account at Barclays Bank Account No. 3779246 which they estimated held Kshs. 15,000 but had since established that there was actually no money therein.
10. It was further deposed that benefits, whenever they accrue, in form of rental income or proceeds of farming, from the deceased's estate, so far, have been distributed equally between the deceased's two widows. The 1<sup>st</sup> administrator further denied the allegation that the protestors were never involved in the petition for grant and that they have since been involved in the attempts at distribution of the estate.

### **Determination**

11. I have considered the summons for confirmation of grant and the affidavits in support as well as the affidavits of protests. I have also considered the annexed documents. I have considered the depositions by the 1<sup>st</sup> administrator and the protestors. The issue for determination is whether the application is merited.
12. It is not in dispute that the deceased died intestate. It is also not in dispute that the deceased was survived by his two widows and a number of children.
13. The administrators have presented their proposed schedule of distribution of the estate of the deceased. It is their case that the said schedule contains in paragraph 8 of the affidavit in support of the Summons for Confirmation of grant, all the deceased's assets.
14. On the part of the protestors, they contend that there are some assets missing from the list, that the administrators should be made to account for how they have used the deceased's estate so far and further that they do not consent to the mode of distribution proposed by the administrators.



15. Taking all the above into consideration and given that the deceased was a polygamist, ideally the distribution of his estate was to accord with Section 40 (1) of the [Law of Succession Act](#), which provides that:

“Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children”.

16. That being said, the protestors herein moved this court specifically seeking to have the administrators account for the deceased’s estate since obtaining grant of letters of administration intestate on the 21<sup>st</sup> January 2009, about 16 years ago.

17. The duties of personal representatives of a deceased’s estate are stipulated in the [Law of Succession Act](#). These duties include the production of true and accurate accounts. Section 83 of the [Act](#) provides inter alia:

“(e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

(h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.”

18. Under Section 79 of the [Law of Succession Act](#), the property of a deceased person vests in his personal representative as follows:

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.

19. [In Re Estate of Julius Mimano \(Deceased\)](#) [2019] eKLR, Musyoka, J stated:

“The personal representative of a deceased person holds a unique position in law. The property of the dead person is vested in them by virtue of section 79 of the [Law of Succession Act](#). The effect of section 79, read together with section 82 of the Act, is that the same puts the personal representative on the same footing with an owner of the property, in the sense that he exercises the powers that the legal owner of the property would have exercised were they alive, and suffered the same burden of duties and obligations over the property as the legal owner would have been under were they to be alive. Yet, the property, although vested in them by law, would not be theirs. Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and,



indeed, the *Trustee Act*, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.”

20. From the foregoing, it is evident that the role of a personal representative as bestowed by the law is fiduciary in nature. A personal representative is appointed by the Court, to collect and manage the assets of the estate of a deceased person as a trustee, for the benefit of the beneficiaries of the estate in accordance with the law. A personal representative thus owes a fiduciary duty to the beneficiaries. It is for that reason that indeed, when applying for a grant of letters of administration intestate, a personal representative undertakes to render a just and true account thereof, whenever required by law so to do. Further, the dealings of a personal representative with the estate of a deceased person are of great interest to the Court, which has the responsibility of ensuring that the estate is not mismanaged or wasted.
21. It follows therefore that production of a full and accurate inventory of assets and liabilities as well as accounts is the tool provided by statute, to monitor the dealings, by the personal representatives, with the estate of the deceased.
22. *In Re Estate of David Kyuli Kaindi (Deceased)* [2015] eKLR Musyoka, J. had this to say on the obligation of personal representatives to render accounts and I concur that:

“The obligation to account is tied up with the fact that personal representatives are also trustees. They are defined as such in the *Trustee Act*, Cap 167, Laws of Kenya, at Section 2. This is so as property belonging to another vests in them in their capacity as personal representatives, and they hold the same for the benefit of others – beneficiaries, heirs, dependants, survivors, creditors, among others. They stand in a fiduciary position in relation to the property and the beneficiaries. As they hold the property for the benefit of others or on behalf of others – they stand to account to the persons for whose benefit or on whose behalf they hold the property. It is an equitable duty and a statutory obligation.”
23. In the instant case, the administrators herein owe a fiduciary duty to the beneficiaries of the estate of the deceased and indeed, the protestors, for whose benefit the administrators hold the assets of the estate, to account for their dealings with the same.
24. Section 83 of the *Law of Succession Act* obliges the administrators to produce to Court, accounts within 6 months from issuance of the grant and also within 6 months from confirmation of the grant or after completion of the distribution of the estate.
25. Accounts must also be produced when the Court of its own motion or on the application of an interested party requires the same either before or after completion of administration of the estate.
26. Failure to render accounts as required by law is one of the statutory grounds for revocation of grant. Section 76(d)(iii) of the *Act* provides in part:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

  - d. that the person to whom the grant was made has failed, after due notice and without reasonable cause either –



(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular;...” [emphasis added]

27. In light of the provisions of Sections 79 and 83 of the *Law of Succession Act*, the protestors, being beneficiaries of the estate of the deceased, are well within their right to demand and apply for accounts notwithstanding that the grant is yet to be confirmed. They have raised concern as to the administrators’ dealing with the estate.
28. In the premises, the Court must prior to confirmation of the grant, satisfy itself that the administrators have thus far, faithfully dealt with the estate of the deceased. The administrators must also demonstrate to the satisfaction of the Court that the assets that the court is being asked to distribute in the Summons for confirmation of the grant, do in fact belong to the estate of the deceased.
29. In the result, I do find that the Application dated 20<sup>th</sup> April 2022 has merit and the same is hereby allowed.
30. I order the administrators herein to give a full inventory of and an accurate and true account of the assets of the estate of the deceased from the date that they were issued with the grant of letters of administration intestate to date. Such inventory and accounts shall be delivered to this court within thirty (30) days of today and in default, this court shall have no option but to revoke the grant and make other appropriate orders in the interest of justice and of the beneficiaries of the estate as by law provided. Mention on 8<sup>th</sup> May 2024 to confirm compliance and for further directions.
31. Each party to bear their own costs of the application herein.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 25<sup>TH</sup> DAY OF MARCH, 2024**

**R.E. ABURILI**

**JUDGE**

